

NA 00-0047-C H/H Seay v. USA
Judge David F. Hamilton

Signed on 3/5/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

SEAY, CLAYTON ADAM,)
UNITED STATES OF AMERICA, THIRD)
PARTY PLAINTIFF FILED 5/26/00,)

Plaintiffs,)
vs.)

UNITED STATES OF AMERICA,)
MITCHELL, WILLIE IN HIS)
OFFICIAL CAPACITY AS)
INSPECTOR-IN-CHARGE, UNITED)
STATES POSTAL INSPECTION)
SERVICE * DISMISSED 6/23/00)
(#20),)

DORSTEN AND DORSTEN, THIRD)
PARTY DEFENDANT FILED 5/26/00,)
DORSTEN ENTERPRISES INC, THIRD)
PARTY DEFENDANT FILED 5/26/00,)

Defendants.)

CAUSE NO. NA00-0047-C-D/G

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

CLAYTON ADAM SEAY,)	
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant and Third-Party Plaintiff,)	CAUSE NO. NA 00-47-C H/H
)	
)	
v.)	
)	
DORSTEN AND DORSTEN and)	
DORSTEN ENTERPRISES, INC.)	
)	
Third-Party Defendants.)	
)	

ENTRY ON PENDING MOTIONS

Officers of the United States Postal Inspection Service seized plaintiff Clayton Adam Seay's commercial property in 1993. The seizure occurred pursuant to a search warrant during a criminal trademark investigation of Seay and his heat transfer business. The Government never charged Seay with a crime, never informed Seay its investigation was over, and never initiated forfeiture proceedings on the property. Sometime after the seizure, Seay's

property sustained water damage in a storage facility the Government leased from Dorsten and Dorsten and Dorsten Enterprises, Inc.

Seay has sued the United States seeking compensation for the value of his property that was destroyed or damaged.¹ He also seeks damages for the Government's alleged use of his property as well as for lost business income and lost business opportunities. In turn, the Government has asserted third-party claims against the Dorsten group for negligence.

The Government has moved to dismiss Seay's claim for lack of subject matter jurisdiction based on sovereign immunity. The Government also contends that Seay's lawsuit is barred by the doctrine of laches. Alternatively, the Government has acknowledged that a transfer of the case to the United States Court of Federal Claims may be appropriate.² In addition, the Dorsten defendants have moved for summary judgment on the Government's third-party negligence claim.

¹Seay also sued Willie Mitchell, Inspector-in-Charge of the USPIS, in his official capacity. On June 23, 2000, Judge Dillin granted the Government's motion to dismiss Mitchell from the lawsuit.

²The Government described its motion as one for dismissal or, in the alternative, for summary judgment based on matters presented outside of the pleadings. The Government acknowledged in its brief and during oral argument that transfer to the Court of Federal Claims is another appropriate remedy for the court to consider. See Gov. Br. at 12 ("[T]his court does not have jurisdiction and the case must be dismissed or transferred to the Court of Federal Claims, pursuant to 28 U.S.C. Section 1631.").

The court heard argument on the Government's motion on February 15, 2002. As explained below, the court grants the Government's motion and transfers this action, including the third-party claim, to the Court of Federal Claims pursuant to 28 U.S.C. § 1631.

This is a case in which the ancient division between legal and equitable relief governs which of two courts has subject matter jurisdiction. Seay no longer seeks the equitable relief of the return of the actual property itself, but instead seeks money to compensate him for the damage to that property. Because his property is no longer available, the equitable remedy for the return of property established under Rule 41(e) of the Federal Rules of Criminal Procedure is not available. Thus, Seay's claim in substance is one for damages for a taking of private property without just compensation, and because he seeks more than \$10,000, his claim falls within the jurisdiction of the Court of Federal Claims. See *Froudi v. United States*, 22 Cl. Ct. 290 (Cl. Ct. 1991) (holding that Court of Claims had jurisdiction over claim for monetary compensation for taking of private property, while district court had jurisdiction over claims seeking return of property taken through allegedly defective forfeiture proceeding). The court does not reach the merits of the Government's laches defense or of the third party claim.

Applicable Standard

The decisive portion of the government's motion is a motion to dismiss or transfer for lack of subject matter jurisdiction. When considering subject matter jurisdiction, a district court may consider not only the pleadings but also additional evidence. *E.g.*, *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983, 990 (7th Cir. 2000). 28 U.S.C. § 1631 provides that a court "shall, if it is in the interest of justice" transfer an action over which it does not have jurisdiction to a court in which the action could have been brought at the time it was filed. See *Best v. United States*, 14 Cl. Ct. 720, 724 (Cl. Ct. 1988) (exercising jurisdiction after transfer and treating action, for purposes of statute of limitation, as if it had been filed properly when filed in the transferor district court).

Factual Background

Plaintiff Seay operated a small business in New Albany, Indiana that specialized in the production of "heat transfers" with various designs, which other manufacturers would apply to shirts and other clothing. On November 9, 1993, pursuant to a search warrant, United States Postal Inspection Service (USPIS) investigators seized thousands of the transfers along with Seay's business equipment, about \$2,000 in cash, and other items. Seay has alleged that the seized items were worth nearly \$250,000. That figure is hotly disputed, especially since Seay does not appear to contend that he actually held valid licenses for many images of trademarked names, characters, and symbols. The USPIS was investigating Seay for possible criminal trademark and copyright violations.

As time passed, the United States neither indicted Seay nor told him that its criminal investigation had ended. On or about November 9, 1998, the five-year period for the Government to initiate an administrative forfeiture proceeding with respect to Seay's property expired.

The USPIS stored Seay's property in a warehouse that it leased from Dorsten Enterprises, Inc. On April 26, 1999, a USPIS postal inspector informed Seay that his property had been damaged by water while in the United States' custody. The inspector told Seay that some items had been so badly damaged that they had been discarded or otherwise disposed of. Seay retrieved some of his property in May or June 1999, including the cash that had been seized. In 2000 he brought this action with respect to the property that had been damaged, destroyed, and/or lost.

Discussion

Seay has styled his complaint as one for equitable relief in the form of an award of the value of his damaged and destroyed property. See Amended Cplt. ¶ 1. The Government has moved to dismiss Seay's complaint on the grounds that sovereign immunity bars the claim and deprives the court of subject matter jurisdiction. The Seventh Circuit has not addressed directly this issue with respect to damaged or destroyed property.

In cases arising under Federal Rule of Criminal Procedure 41(e), the five federal circuit courts that have considered the sovereign immunity defense as it applies to claims like Seay's for money damages rather than the actual return of property all support the Government's position. Seay contends these decisions are erroneous. He argues that this court has jurisdiction to order the relief he seeks because the Seventh Circuit has recognized an equitable cause of action independent of Rule 41(e).

There is no statutory waiver of sovereign immunity giving this court jurisdiction to consider plaintiff Seay's claim for relief based on the value of his damaged and destroyed property. Sovereign immunity divests federal courts of jurisdiction over claims against the United States except in cases where the Government has waived sovereign immunity by consenting expressly to be sued. *LaBonte v. United States*, 233 F.3d 1049, 1051 (7th Cir. 2001) (citations omitted) (waiver of sovereign immunity is a "prerequisite for jurisdiction"). "What it means to say that the United States possesses sovereign immunity is that there is no common-law or equitable liability." *United States v. County of Cook*, 167 F.3d 381, 385 (7th Cir. 1999), citing *OPM v. Richmond*, 496 U.S. 414, 424-26 (1990). Relief against the United States depends on statutes, which should not be read to expose the Government to liability unless Congress makes a remedy available explicitly. *County of Cook*, 167 F.3d at 385, citing among other cases *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992).

One potential solution to the sovereign immunity problem might be equitable relief under Federal Rule of Criminal Procedure 41(e), but it does not resolve the sovereign immunity problem for plaintiff Seay. In relevant part, Rule 41(e) provides:

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings.

Thus, Rule 41(e) provides a judicial procedure by which a person may seek to recover property that federal agents have seized, but it says nothing about recovering money damages for property that has been destroyed or damaged.

Plaintiff Seay argues instead that the court has equitable power to award him the value of his damaged or destroyed property. In *Mr. Lucky Messenger Service, Inc. v. United States*, 587 F.2d 15, 16 (7th Cir. 1978), the Seventh Circuit held that there is a cause of action in equity for the return of property from the government that is independent from Rule 41(e). Like Seay, the plaintiff in *Mr. Lucky Messenger Service* had its property seized during a criminal investigation. Among other things, the seized property included \$65,000 in currency. The government never charged the plaintiff with any crime. The plaintiff filed suit

requesting the court to order the return of the currency on equitable grounds. Reversing the district court's dismissal of the plaintiff's claim, the Seventh Circuit wrote:

The more typical action for return of seized property arises under Rule 41(e), Fed. R. Crim. P., which permits the district court to order the return of property which was illegally seized. Courts, however, have additionally recognized an independent cause of action for return of property based on the general equitable jurisdiction of the federal courts.

587 F.2d at 16-17. Although the Seventh Circuit did not discuss why the plaintiff's action did not fall within the purview of the "the more typical action" under Rule 41(e), the advisory committee notes for the rule indicate that prior to the 1989 amendments, there was some confusion about the rule's application to persons whose property was lawfully seized. "Prior to the amendment, Rule 41(e) did not explicitly recognize a right of a property owner to obtain return of lawfully seized property" Fed. R. Civ. P. 41(e) adv. comm. note. "[T]he rule failed to address the harm that may result from the interference with the lawful use of property by persons who are not suspected of wrongdoing." *Id.*

In *Mr. Lucky Messenger*, the Seventh Circuit did not discuss whether a monetary award would be available as equitable relief in cases where property is damaged or destroyed. In more recent cases involving the return of property seized by the government during criminal investigations, the Seventh Circuit has continued to recognize an equitable action for the return of the property itself. See

Interstate Cigar Co. v. United States, 928 F.2d 221, 222 (7th Cir. 1991) (“Jurisdiction was based on Rule 41(e) . . . and the court’s general supervisory powers over federal law enforcement officers. The district court properly exercised such jurisdiction entirely on equitable grounds.”); *United States v. Solis*, 108 F.3d 722 (7th Cir. 1997) (“This circuit has recognized that a post-conviction Rule 41(e) motion will be treated as a civil equitable proceeding for the return of the property in question,” citing *United States v. Taylor*, 975 F.2d 402, 403 (7th Cir. 1992)).

The problem for Seay is that his property was destroyed while the Government held it, so there is no point in seeking its return, even if that were physically possible. *Mr. Lucky Messenger*, *Interstate Cigar*, and *Solis* did not involve claims for equitable monetary relief for damaged or destroyed property.³ In addition, none of the cases considered a sovereign immunity defense.

Plaintiff Seay also relies on decisions of the Second and Ninth Circuits holding in cases like this one, where the government has lost or destroyed property, that federal courts may award damages as an equitable remedy. See

³The plaintiffs in *Interstate Cigar* ultimately sought damages in an action before the Court of Federal Claims. See *Interstate Cigar Co. v. United States*, 32 Fed. Cl. 66 (Fed. Cl. 1994) (drug distributors were not entitled to damages from the United States to compensate them for expired drugs because they were not good faith purchasers and because they did not prove the value of the seized property). Although the Seventh Circuit discussed whether the plaintiffs had an adequate remedy at law against the seller while considering the equitable claim before it, the action before it “demand[ed] the return of seized property.” *Interstate Cigar*, 928 F.2d at 222.

United States v. Martinson, 809 F.2d 1364, 1367-69 (9th Cir. 1987); *Mora v. United States*, 955 F.2d 156, 160 (2d Cir. 1992); *Soviero v. United States*, 967 F.2d 791 (2d Cir. 1992); *Rufu v. United States*, 20 F.3d 63, 65 (2d Cir. 1994). The opinions in those cases do not indicate that the United States asserted sovereign immunity as a defense in those cases. In *Solis*, in *dicta*, the Seventh Circuit cited *Mora*, 955 F.2d at 159-61, for the proposition that “if the government loses property of a defendant committed to its custody, the district court has equitable jurisdiction to award damages.” *Solis*, 108 F.3d 722-23. That passing citation, however, cannot be deemed a considered decision on the sovereign immunity defense, which was not raised in either *Solis* or *Mora*.

Since 1998, the Third, Fourth, Fifth, Eighth, and Eleventh Circuits have all considered the sovereign immunity defense to claims like Seay’s, for equitable monetary relief for the government’s loss or destruction of seized property. All five courts concluded that district courts do not have jurisdiction over such claims because the United States has not expressly waived its sovereign immunity with respect to this type of relief. See *United States v. Bein*, 214 F.3d 408, 415 (3d Cir. 2000) (“Rule 41(e) provides for one specific remedy – the return of property.”); *United States v. Jones*, 225 F.3d 468, 470 (4th Cir. 2000) (no jurisdiction over claim for damages because Rule 41(e) does not expressly waive sovereign immunity; court affirmed order granting motion for return of currency seized); *Pena v. United States*, 157 F.3d 984, 986 (5th Cir. 1998) (“Rule 41(e) makes no

provision for monetary damages, and we will not read into the statute a waiver of the federal government's immunity from such damages."); *United States v. Hall*, 269 F.3d 940, 943 (8th Cir. 2001) (in light of lack of express waiver and recent Supreme Court jurisprudence, Rule 41(e) does not operate to waive sovereign immunity for damages claims); *United States v. Potes Ramirez*, 260 F.3d 1310, 1315-16 (11th Cir. 2001) (sovereign immunity bars claims for damages for destroyed property because there has been no express waiver under Rule 41(e) or otherwise).⁴

In *United States v. Hall*, the Eighth Circuit observed that the decisions holding that sovereign immunity bars jurisdiction over claims for equitable

⁴Seay argues that the Fourth Circuit's decision in *Jones*, 225 F.3d 468, was contradicted by *United States v. Minor*, 228 F.3d 352, 355 (4th Cir. 2000), which was decided the same day. In *Minor*, the Fourth Circuit considered a challenge to a Drug Enforcement Agency forfeiture proceeding for which the plaintiff alleged he never received notice. Through the forfeiture proceeding, the DEA gained ownership of about \$5,000 in currency seized from the plaintiff during an investigation. The plaintiff sought the return of his money. Because the plaintiff brought the action years after the completion of the forfeiture, the court declined to treat the case as an action under Rule 41(e). *Minor*, 228 F.3d at 356 n. 3. The court characterized the action as one for the return of the plaintiff's property, which was currency, as opposed to an action for damages. *Minor* and *Jones* are consistent in that they both recognize jurisdiction over a claim for the return of seized currency. See *Minor*, 228 F.3d at 355 ("In suing for return of the currency, Minor seeks restitution of 'the very thing' to which he claims an entitlement, not damages in substitution for a loss."); *Jones*, 225 F.3d at 469 (affirming order for return of seized currency and personal papers). The *Minor* decision expressly noted that its holding was not inconsistent with *Jones*: "[O]ur holding [in *Jones*] does not bar the relief sought by Minor, because that remedy is not legal: the fact that the government obviously cannot restore to Minor the specific currency that was seized does not transform the motion into an action at law." *Jones*, 255 F.3d at 470 n.4 (internal quotation omitted).

monetary relief have followed a change in the “sovereign immunity landscape” in the last ten years:

In *United States v. Nordic Village, Inc.*, 503 U.S. 30, 39 (1992), the Court construed a provision of the Bankruptcy Code as authorizing declaratory and injunctive relief against the government but held that it did not contain the “unequivocal textual waiver” required to authorize “a recovery of money from the United States.” In *Lane v. Pena*, 518 U.S. 187, 197 (1996), the Court held the United States immune from damage claims under § 504 of the Rehabilitation Act, agreeing with the government that, “where a cause of action is authorized against the federal government, the available remedies are not those that are ‘appropriate,’ but only those for which sovereign immunity has been expressly waived.” Finally, in *Department of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 263 (1999), the Court narrowly construed *Bowen v. Massachusetts*, 487 U.S. 879 (1988)] holding that the Administrative Procedure Act, by authorizing equitable relief but not money damages against the United States, does not waive the government’s sovereign immunity from monetary relief that is “compensation for the loss,” even if that monetary relief is labeled “equitable.”

See *Hall*, 269 F.3d at 942-43.

In light of the Supreme Court’s directives and the authority from the courts of appeal that have actually considered the sovereign immunity defense in cases like *Seay*’s, this court concludes that sovereign immunity divests the court of jurisdiction over *Seay*’s claim for equitable monetary relief. Although the Seventh Circuit has recognized an independent equitable action for the return of seized property, it has not held that damages are recoverable, and it has never considered or rejected the defense of sovereign immunity to such a claim. In addition, the Seventh Circuit has not written about the subject since the Fifth

Circuit's decision in *Pena*, which was the first appellate decision holding that sovereign immunity bars claims for equitable monetary relief for lost or damaged seized property. Finally, no court of appeals since *Pena* has decided the issue the other way. This court follows the five circuits that have held such claims in district courts to be subject to a sovereign immunity defense.

This does not mean that Seay has no forum in which to seek a remedy against the United States for the destruction of his property. In oral argument, the parties agreed with the court that the Court of Federal Claims has jurisdiction over Seay's claim, at least in substance. The Court of Federal Claims has jurisdiction over certain civil claims against the United States under the Tucker Act, 28 U.S.C.A. § 1346(a)(2). These claims include constitutional and statutory claims.⁵ Although it appears that Seay drafted his complaint to avoid that court's jurisdiction, the substance of the action appears to be precisely the type of claim that the Court of Federal Claims is authorized to hear. See *Froudi v. United States*, 22 Cl. Ct. 290, 297, 300 (Cl. Ct. 1991) (holding that Court of Claims had jurisdiction over damages claim for taking of property without just compensation through allegedly defective forfeiture proceeding; staying action on damages claim while equitable claims for return of actual property were litigated in district court). Without a possible remedy in the Court of Federal Claims, Seay would be left

⁵District courts have concurrent jurisdiction with the Court of Federal Claims over such claims up to a jurisdictional maximum of \$10,000. 28 U.S.C. § 1346 (a)(2). Seay values his claim at many times that amount.

without a forum for his claim against the Government for the destruction of his property, implicating the Fifth Amendment takings clause.

Conclusion

This court does not have subject matter jurisdiction over plaintiff Seay's claim for the value of the property the Government seized from him and later damaged or destroyed. However, because it is in the interest of justice, and pursuant to 28 U.S.C. § 1631, the court transfers this action, including the third-party claim, to the United States Court of Federal Claims.

So ordered.

Date: March 5, 2002_____

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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